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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

<p>CENTER FOR BIOLOGICAL DIVERSITY, et al.,</p> <p>Plaintiffs,</p> <p>and</p> <p>ALLIANCE FOR THE WILD ROCKIES and NATIVE ECOSYSTEMS COUNCIL,</p> <p>Consolidated Plaintiffs,</p> <p>vs.</p> <p>U.S. FOREST SERVICE, et al.,</p>	<p>Lead Case No. CV 22-114-M-DWM</p> <p>Member Case No. CV 23-3-M-DWM</p> <p>DEFENDANT- INTERVENOR/CONSOLIDATED DEFENDANT-INTERVENOR KOOTENAI TRIBE OF IDAHO'S SHORT RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY [ECF No. 84]</p>
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**DEFENDANT-INTERVENOR/CONSOLIDATED
DEFENDANT-INTERVENOR'S SHORT
RESPONSE TO NOTICE OF SUPPLEMENTAL
AUTHORITY**

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Defendants, and KIRSTEN KAISER, District Ranger, Kootenai National Forest, Three Rivers Ranger District, <i>et al.</i> , Consolidated Defendants. and KOOTENAI TRIBE OF IDAHO, Defendant-Intervenor/ Consolidated Defendant-Intervenor.	
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The Kootenai Tribe of Idaho (the Tribe) offers the following observations regarding the post-briefing decision referenced in the Notice of Supplemental Authority (ECF No. 84) filed by Plaintiffs Center for Biological Diversity et al. in this case involving the Black Ram Project. See *Alliance for the Wild Rockies v. Gassmann (Gassman)*, CV 21-105-M-DLC, 2023 WL 4172930 (D. Mont. June 25, 2023) (involving the Ripley Project).

First, although *Gassman* concluded the Ripley Project Finding of No Significant Impact was arbitrary and capricious, *id.* at *32, the Court did not require preparation of an Environmental Impact Statement (EIS). Instead, the

Court remanded the matter to the Forest Service to “allow the agencies to follow their ordinary processes to determine whether an EIS is required.” *Id.* The Court did so without vacating the Decision Notice and Finding of No Significant Impact. *Id.* at *33 (instead enjoining operations while the National Environmental Policy Act (NEPA) “deficiencies identified in this Order” are addressed on remand). This relates to the Tribe’s remedy argument in its opening summary judgment brief (ECF No. 66) at page 52 and in its reply brief (ECF No. 82) at page 23 (which the Court need not reach if it upholds the Black Ram Project on the merits).

Second, *Gassman* ruled against a NEPA argument that equated road closures that were not 100% effective at restricting public access with ineffective road closures like those found in *Alliance for the Wild Rockies v. Probert*, 412 F. Supp. 3d 1188, 1202-08 (D. Mont. 2019). *Gassman*, 2023 WL 4172930, at *17-18. This relates to the Tribe’s argument in its opening summary judgment brief at pages 42-43 and its reply brief at pages 16-18, offered in response to argument of Consolidated Plaintiffs Alliance for the Wild Rockies et al. that sought to equate an effective road closure with one that is 100% effective.

Third, the Tribe notes that the Endangered Species Act (ESA) violations found by the Court in *Gassman* stemmed from procedural ESA claims not at issue

in this case. See *Gassman*, 2023 WL 4172930, at *33 (ESA cumulative effects claim); *id.* (ESA claim related to preparing a biological assessment for the lynx).

Respectfully submitted this 7th day of July, 2023.

s/ Julie A. Weis

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